

1  
2  
3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 SECURITIES AND EXCHANGE  
7 COMMISSION,

Case No. 3:19-cv-00429-MMD-CLB

8 Plaintiff,

ORDER

9 v.

10 BETTOR INVESTMENTS,  
11 LLC, *et al.*,

Defendants.

12 The Securities and Exchange Commission ("SEC") brought this action against  
13 Defendants Bettor Investments LLC ("Better")<sup>1</sup> and Matthew C. Stuart ("Stuart")  
14 (collectively "Defendants") for alleged violations of federal securities laws. (ECF No. 1.)  
15 The Court approved a consent judgment (the "Consent Judgment") between the parties  
16 that ordered "Defendants [to] pay a civil penalty in an amount to be determined by the  
17 Court upon motion of the [SEC]." (ECF No. 10 at 8.) Before the Court is the SEC's Motion  
18 and Memorandum of Law in Support of Civil Penalties (the "Motion") (ECF No. 11).  
19 Defendants had until October 21, 2019 to file a response. To date, they have not done so.  
20 For the reasons explained below, the Court grants the Motion.

21 Although the SEC does not seek a specific penalty amount, the SEC requests that  
22 the Court award a third-tier civil penalty of at most \$75,500,<sup>2</sup> based on allegations that

23  
24 <sup>1</sup>Better has officially dissolved in July 2017. (ECF No. 11 at 4-5.)

25 <sup>2</sup>The Court ordered Defendants to pay disgorgement in the amount of \$75,500.  
26 (ECF No. 10 at 6.) Under Section 20(d) of the Securities Act of 1993 and Section 21(d)(3)  
27 of the Securities Exchange Act of 1934, "[t]he amount of a third-tier penalty for each  
28 violation shall not exceed the greater of (i) \$189,427 for a natural person (Defendant  
Stuart), (ii) \$947,130 for any other person (Defendant Bettor), or (iii) the gross amount of  
pecuniary gain to the defendant as a result of the violation (\$75,500)." (ECF No. 11 at 3.)  
(*fn. cont...*)

1 Defendants knowingly and repeatedly made material misrepresentations and omissions  
2 to investors that violated federal securities laws and inflicted substantial losses. (ECF No.  
3 11 at 5-7.) However, as the SEC noted, the Court may determine “whether the penalty  
4 should be reduced due to the [Defendants’] demonstrated current and future financial  
5 condition.” (ECF No. 11 at 4, 7-8 (citing to defendant's *S.E.C. v. Earthly Mineral Sols., Inc.*,  
6 No. 2:07-cv-1057 JCM LRL, 2011 WL 1103349, at \*5 (D. Nev. Mar. 23, 2011)).) During an  
7 investigative testimony with the SEC, Defendant Stuart testified that he became destitute  
8 as a result of his misconduct, was evicted from his apartment, lived in his car for a time,  
9 and now pays \$300 a month to reside in a friend’s home in Idaho where he works as a  
10 poker dealer at a casino. (*Id.* at 7-8.) Taking into consideration Stuart’s financial  
11 circumstances—balanced against the egregiousness of his misconduct—the Court finds  
12 that a civil penalty of \$60,000 is sufficient “to punish [Defendant Stuart] and deter him and  
13 others from future securities violations.” *Sec. & Exch. Comm’n v. Moore*, Case No.  
14 215CV1865LDGGWF, 2017 WL 1404318, at \*11 (D. Nev. Apr. 18, 2017) (collecting  
15 cases).

16 In light of the lack of any response to the Motion and because Defendants stipulated  
17 to the SEC’s allegations as a condition of the Consent Judgment, the Court will grant the  
18 Motion pursuant to Local Rule 7-2(d) and impose a \$60,000 civil penalty on Stuart. See  
19 LR 7-2(d) (providing that “failure of an opposing party to file points and authorities in  
20 response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for  
21 attorney[s’] fees, constitutes a consent to the granting of the motion”).

22 It is therefore ordered that the SEC’s Motion and Memorandum of Law in Support  
23 of Civil Penalties (ECF No. 11) is granted.

24 ///

25 ///

---

27 See 15 U.S.C. §§ 77t(d), 78u(d). Accordingly, the \$75,500 pecuniary gain is the maximum  
28 civil penalty that this Court can award.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

It is further ordered that Matthew C. Stuart pay \$60,000 in civil penalties.

It is further ordered that the Clerk enter judgment against Mathew C. Stuart in  
accordance with this order.

DATED THIS 27<sup>th</sup> day of March 2020.

  
\_\_\_\_\_  
MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE